

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M-53440-2022

Date of Decision.:10.03.2023

Balraj Singh @ Baji

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. S.P.S. Khaira, Advocate
for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

Learned State counsel has placed on record status report in the form of affidavit of Shri Karnail Singh, PPS, Deputy Superintendent of Police, Sub-Division Khanna, District Ludhiana, apart from the custody certificate of the petitioner.

On the other hand, learned counsel for the petitioner has placed on record copy of FSL report, copy of recovery memo dated 18.08.2022 prepared by the police and also the copy of the order dated 18.08.2022 passed by Learned Judicial Magistrate 1st Class, Khanna whereby inventory was certified under Section 52A of the NDPS Act.

Petitioner is seeking regular bail by way of this petition under Section 439 Cr.P.C in case FIR No.135 dated 18.08.2022 registered under Section 22 of NDPS Act registered at Police Station Khanna City-2, District Ludhiana.

Allegations are that on 18.08.2022 petitioner was found in

possession of 24 injections of Buprenorphine IP of 2 ML each on which manufacturing licence no.G/1061 was written; and 6 injections without label besides 30 vials of Pheniramine Maleate injection IP avil of 10 ML each on which batch number and manufacturing date was also mentioned. Five injections labelled as Buprenorphine; and two unlabelled injections were sent to the FSL for necessary analysis. Besides 3 vials containing liquid material labelled as avil and two unlabelled vials each containing 10 ML colourless liquid material were also sent. As per the report of FSL 9.9706 gram of Buprenorphine Hydrochloride was found in the first parcel. 3.98812 gram of Buprenorphine Hydrochloride was found in the second parcel; whereas parcel Nos.3 & 4 contained Pheniramine Maleate.

It is contended by learned counsel for the petitioner that as far as the possession of Pheniramine Maleate is concerned, it does not fall within the scope of NDPS Act. It is further contended that out of 24 injections of Buprenorphine, only 5 were sent for analysis and since these injections did not contain any batch number, therefore it cannot be stated that rest of the vials also contained Buprenorphine injection. Similarly out of 6 injection without label, only 2 were sent for analysis and so it cannot be stated that other vials also contained Buprenorphine Hydrochloride.

Learned counsel further contended that as per Rule 66 of the NDPS rules, possession of less than 100 units of Buprenorphine Hydrochloride cannot be considered to be an offence when the same is required for medicinal use. Reliance has placed upon Sukhwinder Singh @ Vicky v. State of Punjab (P&H) : Law Finder Doc Id # 1769355; Ravinderjit Singh @ Ravi v. State of Punjab and Amit Kumar alias Rachu Versus State of U.T. Chandigarh. With these submissions prayer is

made for grant of bail.

Learned State counsel does not dispute the fact that no batch number was mentioned on any of the recovered vials. He also concedes that 5 vials on which manufacturing license number was mentioned but not the batch number, were sent to the FSL besides two unlabelled vials. However, prayer is made to reject the bail petition on the ground that it is barred under Section 37 of the NDPS Act.

Having considered submissions of both the sides, this Court is of the view that petitioner deserve to be released on bail. As per custody certificate, petitioner is in custody for the last 6 months and 20 days. He has no criminal antecedents. Admittedly, none of the recovered 30 vials contained batch number. 24 vials were having label mentioning thereon the manufacturing license number only and not the batch number and only 5 of them were got analysed from FSL which were found to contain Buprenorphine Hydrochloride and so it cannot be stated that rest of the vials contained the same psychotropic substance.

Apart from the above, the case of the petitioner is covered by **Sukhwinder Singh @ Vicky's case (supra)** wherein it has been held that possession of less than 100 units of Buprenorphine cannot be considered as offence in case the same is required for medicinal use and that statutory provision contained in Rule 66 of the NDPS rules is presumed to be valid unless the same is struck on by competent Court of law. Same view was taken in **Ravinderjit Singh @ Ravi's case (supra)** and **Amit Kumar alias Rachu's case (supra)**.

In view of the aforesaid facts and circumstances but without commenting anything on the merits of the case, petition is accepted.

Petitioner is admitted to bail on his furnishing bail bonds/surety bond to the satisfaction of the Learned Trial Court/Learned Chief Judicial Magistrate concerned, on usual terms and conditions.

March 10, 2023

Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No